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# State v. Parton Appellant's Brief Dckt. 42800

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 42800
Plaintiff-Respondent,	)	
	)	BONNER COUNTY NO. CR 2013-1753
v.	)	
	)	
JAMES L. PARTON,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

James L. Parton appeals from the district court's Felony Judgment (Sentence Imposed). Mr. Parton was sentenced to a unified term of twenty years, with ten years fixed, for his conviction for lewd conduct. Mr. Parton asserts that the district court abused its discretion in sentencing him to an excessive sentence without properly considering the mitigating factors that exist in his case. Specifically, he asserts that the district court abused its discretion when it did not weigh his remorse for committing the instant offense because he had exercised his constitutional right to a jury trial.

## Statement of the Facts & Course of Proceedings

On May 3, 2013, an Information was filed charging Mr. Parton with lewd conduct. (R., pp.72-73.) The charges were the result of a report to police that Mr. Parton may have been engaging in inappropriate sexual activities with his adopted daughter, Z.P. (PSI, p.3.) Mr. Parton entered a not guilty plea to the charge. (R., p.112.)

The case proceeded to trial and, ultimately, the jury returned a guilty verdict. (R., pp.231-254, 256.) At sentencing, the prosecution recommended a unified sentence of life, with fifteen years fixed. (Tr. 11/7/14, p.75, Ls.3-4.) Defense counsel requested an underling sentence of five years fixed, with a “reasonable amount of indeterminate” time, and an opportunity to participate in a period of retained jurisdiction. (Tr. 11/7/14, p.87, Ls.18-25.) The district court imposed a unified sentence of twenty years, with ten years fixed. (R., pp.272.) Mr. Parton filed a Notice of Appeal timely from the district court’s Felony Judgment (Sentence Imposed). (R., pp.274-276.)

## ISSUE

Did the district court abuse its discretion when it imposed, upon Mr. Parton, a unified sentence of twenty years, with ten years fixed, following his conviction for lewd conduct?

## ARGUMENT

### The District Court Abused Its Discretion When It Imposed, Upon Mr. Parton, A Unified Sentence Of Twenty Years, With Ten Years Fixed, Following His Conviction For Lewd Conduct

Mr. Parton asserts that, given any view of the facts, his unified sentence of twenty years, with ten years fixed, is excessive. Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will

conduct an independent review of the record giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. See *State v. Reinke*, 103 Idaho 771 (Ct. App. 1982).

The Idaho Supreme Court has held that, “[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.” *State v. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). Mr. Parton does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Parton must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* (citing *State v. Broadhead*, 120 Idaho 141, 145 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385 (1992)). The governing criteria or objectives of criminal punishment are: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *Id.* (quoting *State v. Wolfe*, 99 Idaho 382, 384 (1978), *overruled on other grounds by State v. Coassolo*, 136 Idaho 138 (2001)).

Specifically, Mr. Parton asserts that the district court abused its sentencing discretion when it failed to properly consider his remorse for committing the instant offense. During the sentencing hearing, the district court refused to consider Mr. Parton’s remorse because he had exercised his constitutional right to a jury trial:<sup>1</sup>

I also note, Mr. Parton, I appreciated today that you are taking – you say you’re taking full responsibility but you didn’t take any responsibility. You

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<sup>1</sup> Mr. Parton does not assert in this appeal that the district court violated his right to a jury trial, but instead merely offers the district court’s statements as evidence of an abuse of sentencing discretion.

denied. You put this little girl through having to go through a trial. This isn't a case where you came forward, admitted what you had done. You know throughout you said you were not guilty, you didn't do anything, her mother made this whole thing up, she was brainwashed into going along, put her through a trial, and then finally when you're convicted by a jury, then we get to the post conviction stage, then, then there's final [sic] admission about a lot of abuse and so that's – that's a factor the Court looks at too that it's a little late to take responsibility after you've been convicted by a jury.

(Tr. 11/7/14, p.93, Ls.3-17.)

In *State v. Alberts*, 121 Idaho 204 (Ct. App. 1991), the Idaho Court of Appeals reduced the sentence imposed, "In light of Alberts' expression of remorse for his conduct, his recognition of his problem, his willingness to accept treatment and other positive attributes of his character." *Id.* 121 Idaho at 204. Mr. Parton has expressed his remorse on several occasions. In completing the PSI, he noted that he wishes he could change was happened. (PSI, p.3.) He submitted the following statement with the PSI:

Everything that happened between me [and] [Z.P.] is my fault [and] only my fault, she is a victim of my lack of restrain [and] false perceptions. I am not capable of adequately expressing the grief, regret [and] sorrow I feel for what I've done, it haunts me night [and] day. I wish more than anything that none of this had ever happened, but it did [and] so now I hope [and] pray that [Z.P.] will receive the help she needs to heal from the injuries that I've caused her. I'm overwhelmed with concern, anxiety [and] remorse for what [Z.P.] might be prone or susceptible to due to what I've done. It is very disturbing to me that she isn't in counseling because I know that if had received the proper treatment after I had been abused as a child, I would likely [have] not transferred this maladjustment to [Z.P.]. I don't want her to grow up [and] do the same thing to some other child like I did. I don't want her to become like me or like those who molested me. I know that what happened to me as a child explains my actions as an adult but it does not justify my actions. I want so much to get the counseling I need [and] to work to pay for the counseling that [Z.P.] needs.

(PSI Attachment, Personal Statement.) At the sentencing hearing, Mr. Parton stated that:

I just want to say how sorry I am. I wish I was – it never happened but it did. It's my fault. I know that it isn't something that you can enforce. I just – I really hope that [Z.P.] gets the treatment that she needs. If I had [received] the treatment that I needed when this happened to me when I was a kid, none of this probably would have happened. I want – I want help. I don't want to be what I've become. There's nothing that I can say ever that would be adequate. I'm just very, very sorry. I hope that [Z.P.] gets that she needs so that she can heal and be happy and have the beautiful life that she deserves.

(Tr. 11/7/14, p.90, L.7-18.)

As mentioned above, Mr. Parton was abused physically and sexually as a child. (PSI, pp.5-6.) Growing up, his father would drink and then beat him "intensely." (PSI, p.5.) He was also physically abused by his mother who also let her children drink with her. (PSI, p.5.) When he reached puberty, Mr. Parton's mother attempted to involve him sexually, but he refused. (PSI, p.5.) However, his brother engaged in inappropriate sexual activity with Mr. Parton and in front of him. (PSI, p.6.)

Yet, despite his history of being abused himself, Mr. Parton was evaluated as having a fairly low risk to reoffend. (Psychosexual Evaluation, p.1.) According to the Static 99r, he was shown to have "a level of risk of recidivism of 2 percent over five years." (Psychosexual Evaluation, p.1.) Men with the same risk profile have a risk "of any recidivism [at] 11 percent over two years and 15.3 percent over 4 years." (Psychosexual Evaluation, p.1.)

Furthermore, Idaho courts have previously recognized that Idaho Code § 19-2523 requires the trial court to consider a defendant's mental illness as a sentencing factor. *Hollon v. State*, 132 Idaho 573, 581 (1999). Mr. Parton was diagnosed with Borderline Personality Disorder with antisocial features, Unspecified Anxiety Disorder, and Unspecified Depressive Disorder. (Psychosexual Evaluation, p.14.)

Based upon the above mitigating factors, Mr. Parton asserts that the district court abused its discretion by imposing an excessive sentence upon him. He asserts that had the district court properly considered his remorse, his history of being abused as a child, and mental health issues, it would have crafted a less severe sentence.

#### CONCLUSION

Mr. Parton respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 24<sup>th</sup> day of September, 2015.

\_\_\_\_\_/s/\_\_\_\_\_  
ELIZABETH ANN ALLRED  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 24<sup>th</sup> day of September, 2015, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

JAMES L PARTON  
INMATE #112684  
ISCI  
PO BOX 14  
BOISE ID 83707

BARBARA BUCHANAN  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

JEREMY P FEATHERSTON  
ATTORNEY AT LAW  
E-MAILED BRIEF

KENNETH K JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
E-MAILED BRIEF

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

EAA/eas